

ORIGINAL

338

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NORTHLAND INSURANCE COMPANY
Plaintiff

v.

No. 1:01-CV-763

LINCOLN GENERAL INSURANCE COMPANY,
J.H.M. ENTERPRISES, INC., and
VERNICE L. STATTS,
Defendants

LINCOLN GENERAL INSURANCE COMPANY,
Third Party Plaintiff

V.

WOOLEVER BROTHERS TRANSPORTATION
INC.

Third Party Defendant

(JUDGE KANE),

FILED
HARRISBURG, PA
JUN 04 2002

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

AFFIDAVIT OF JONATHAN H. RUDD

I, Jonathan H. Rudd, hereby state and affirm in accordance with 28 U.S.C §1746, that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief.

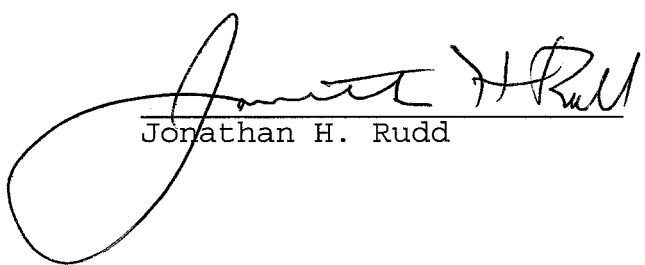
1. I am counsel for Lincoln General Insurance Company in this matter.

2. I requested Northland's attorney to produce copies of all correspondence between Northland and its re-insurers.

3. Attached hereto as Exhibit A is all of the correspondence produced by Northland regarding contacts with its

re-insurers. The most recent letter is dated November 20, 2000, which was approximately six months prior to the alleged settlement in April, 2001. There is no correspondence between Northland and its re-insurers regarding the alleged settlement with Lincoln General.

4. The Exhibits submitted as part of Lincoln General's opposition to Northland's motion for summary judgment are all true and correct copies of documents produced in this litigation. Exhibit A is from Lincoln General's underwriting file and was produced to Northland; Exhibits B through H were produced by Northland to Lincoln General; Exhibit H is a Deposition Transcript which came from Lincoln General's files, but was also in Northland's files; Exhibits I through N were produced by Northland to Lincoln General.



Jonathan H. Rudd

Dated: June 3, 2000

SCHINDEL, FARMAN & LIPSIOUS LLP

ATTORNEYS AT LAW

225 WEST 34TH STREET

NEW YORK, N.Y. 10122

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FACSIMILE (212) 695-6602

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4 CORNWALL DRIVE, SUITE 101

EAST BRUNSWICK, NJ 08816

(732) 390-0166

FACSIMILE (732) 432-7706

Writer's Extension: 241

E-Mail: lpalmer@sfl-legal.com

May 31, 2002

Via Express Mail

Jonathan H. Rudd, Esq.

Attorney for Lincoln General

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-11661

Re: Northland Insurance Co. v. Lincoln General Insurance Co., et al.

Index No.: 1:01-CV-763

Your Client No. 15711-0011

Our File No.: 2015.67

Dear Mr. Rudd:

Enclosed are copies of Northland's correspondence with reinsurers (20 pages). Enclosed also copy of billing records of underlying personal injury actions. The billing records are too numerous to count and, per our conversation, I have not had a chance to have them bates stamped. As before, the production of these records is not to be taken as a waiver of any available privilege.

Very truly yours,

SCHINDEL, FARMAN & LIPSIOUS LLP



Lorienton N.A. Palmer

cc: (Via First Class Mail)
Andrew R. Spiegel, Esq.
3901-A Main Street 2nd Floor
Philadelphia, PA 19127
(215) 483-9800

November 20, 2000

Mr. Edgardo Rodriguez
Paragon
3600 W 80th Street
Minneapolis, MN 55431

Insured:	Woolever Brothers
Our Claim No:	TF209197-02
Date of Loss:	November 17, 1995
Claimant:	Estate of Cliffords and Sherrill Mulligan

Dear Mr. Rodriguez:

This case has previously been reported to E.W. Blanch and General Re.

All claims have now been settled. We paid \$183,750 on the Estate of Robert Clifford, \$428,750 on the Estate of Karen Clifford and \$62,500 for Sherrill Mulligan. The total loss payout was \$675,000. Total expenses to date are \$76,718.24. We are expecting two final legal bills before the file is closed.

If you have any questions, please contact me at 651-688-4716.

Sincerely,

Traci E. Slane
Senior Claims Examiner

May 22, 2000

Ms. Debra Sweetland
E.W. Blanch Co
3500 W 80th St
Mpls, MN 55431

Mr. George Tomaszewski
General Reinsurance Corp
233 S Wacker Dr, Ste 4100
Chicago, IL 60606-6303

Insured:	Woolever Brothers
Our Claim No:	TF209197-02
Date of Loss:	November 17, 1995
Claimant:	Estate of Cliffords and Sherrill Mulligan

Dear Sir or Madam:

We have made an offer to settle the Clifford's claim for \$500,000.

From new information we have, it is very speculative that Mulligan has an ongoing wage loss claim. Therefore, we have made an offer of \$75,000 to settle her injury claim.

Lincoln General would not agree to tender their \$750,000 policy. We are in the process of filing a declaratory judgment action on the coverage issue. However, we have agreed to split the settlements 50/50 and resolve the coverage issue later.

If you have any questions, please contact me at 651-688-4716.

Sincerely,

Traci E. Slane
Senior Claims Examiner

November 29, 1999

Ms. Debra Sweetland
E.W. Blanch Co
3500 W 80th St
Mpls, MN 55431

Mr. George Tomaszewski
General Reinsurance Corporation
233 S Wacker Dr, Ste 4100
Chicago, IL 60606-6303

Insured:	Woolever Brothers
Our Claim No:	TF209197-02
Date of Loss:	November 17, 1995
Claimant:	Estate of Cliffords & Sherrill Mulligan

Dear Sir or Madam:

This is to notify you that we have increased the reserves on the above file to \$600,000 plus expenses. That is a total increase of \$351,000. There is \$400,000 reserved on the two wrongful death claims and \$200,000 reserved on Sherrill Mulligan's injury claim.

It recently came to light that Karen Clifford, the passenger, was conscious approximately 24 minutes prior to her death. Therefore, she has a claim for conscious pain and suffering.

As for Mulligan, we recently received her medical records indicating that she had an anterior cervical discectomy and fusion at C5-6. She has permanent work restrictions and although she has returned to work as an emergency room nurse she is working ten hours less per week than she did before the accident per her doctor's orders. This is permanent restriction.

The case was being set for trial but in light of Mulligan's surgery the case has been taken off the trial calendar and it is known when the case might be tried. To date, we still have no commitment from Lincoln General as to whether or not they will pay their \$750,000.

If you have any questions, please contact me at 651-688-4716.

Sincerely,

Traci E. Slane
Senior Claims Examiner

March 17, 1999

Mr. George Tomaszewski
General Reinsurance Corporation
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Ms. Debra Sweetland
E.W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers
	File Number:	TF209197-2
	Plaintiff:	Estate of Cliffords

Dear Sir and Madam:

We have still have not gotten a commitment from Lincoln General as to whether or not they will pay their \$750,000. We maintain our reserve of \$250,000 plus expenses.

If you have any questions, please advise.

Sincerely,

Jerry Parker
Claims Examiner
Northland Insurance Company

JP/prm/4871

August 6, 1998

Mr. George Tomaszewski
General Reinsurance Corporation
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Mr. David Porter
E.W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers Transportation
	Our File Number:	TF209197-02
	Plaintiff:	Estate of Cliffords

Dear Gentlemen:

This letter will serve as an update regarding the above. The plaintiff has now indicated they would accept \$2 million to resolve both of these claims. We are pressing Lincoln General, whose insurance we feel is primary to tender their \$750,000 to see if we can effectuate a settlement.

Our reserve remains as earlier outlined. If you have any questions, please feel free to give me a call.

Very truly yours,

Jerry Parker
Casualty Claims Specialist

JP/sb/0344

February 11, 1998

Mr. George Tomaszewski
General Reinsurance Corporation
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Mr. David Porter
E.W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers
	Our File Number:	TF209197-2
	Date of Loss:	November 17, 1995
	RGC Claim Number:	2050290
	Claimant:	Estate of Cliffords

Dear Gentlemen:

Enclosed is a copy of the evaluation letter from our defense counsel. At this time our reserve remains as earlier outlined.

If you have any questions or would like anything further, please feel free to call me. I will update you as soon as I receive a settlement demand from the plaintiff.

Sincerely,

Jerry Parker
Casualty Claims Specialist

JP/ers/7932
Enclosure

November 3, 1997

George Tomaszewski
General Reinsurance Corporation
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Mr. David Porter
E.W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers
	File Number:	TF209197-02
	Date of Loss:	November 17, 1995
	GRC Claim Number:	2050290
	Claimant:	Estate of Cliffords

Dear Gentlemen:

This letter will serve as an update regarding the above. We have now received lawsuits on behalf of all the parties involved in this accident, including the property damage and bodily injury claims of the Mulligans. Unfortunately, our insured has now admitted to altering the lease agreement which indicated the lease ended subsequent to the accident. They admit doing this in conjunction with the co-defendant, Jay McCormick.

This obviously greatly increases our exposure and I will be reviewing this matter and advising you of our position in the near future. I will probably wait until I get counsel's evaluation at which I will share with you. Our reserve remains at \$250,000, however, I anticipate that may be increased in the near future.

Very truly yours,

Jerry Parker
Casualty Claims Specialist

JP/sb/0366

April 8, 1997

Mr. George Tomaszewski
General Reinsurance Company
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Re:	Our Insured:	Woolever Brothers
	File Number:	TF209197-2
	Date of Loss:	November 17, 1995
	GRC Claim Number:	2050290
	Claimant:	Estate of Robert Cliffords

Dear Mr. Tomaszewski:

Enclosed is a letter from our defense counsel along with the memorandum outlining the coverage issues. I am authorizing him to proceed with the depositions and filing a Motion for Summary Judgment. Upon result of that motion, I will advise further.

Sincerely,

Jerry Parker
Liability Claims Examiner

JP/kf/2941
Enclosure



General Reinsurance Corporation
233 South Wacker Drive
Suite 4100
Chicago, IL 60606-6303
Telephone: (312) 207-5300
Fax: (312) 207-5399

TO: Jerry Parker
Northland

DATE: 3-19-97
SUBJECT: TF 209197
Woolen Bros.
GRC #2050290

MESSAGE

Jerry:
When you have a chance please provide
us with an update.
If you have a copy of Ernest's report
regarding the coverage/agency issues I'd appreciate
that as well.

Thank you

SIGNED: Gary Tomaszewski

REPLY:

DATE:

SIGNED:

April 10, 1997

Mr. David Porter
E. W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers
	File Number:	TF209197-2
	Date of Loss:	November 17, 1995
	GRC Claim Number:	2050290
	Claimant:	Estate of Robert Cliffords

Dear Mr. Porter:

Enclosed is a letter from our defense counsel along with the memorandum outlining the coverage issues. I am authorizing him to proceed with the depositions and filing a Motion for Summary Judgment. Upon result of that motion, I will advise further.

Sincerely,

Jerry Parker
Liability Claims Examiner

JP/kf/2941
Enclosure

September 3, 1996

Mr. George Tomaszewski
General Reinsurance Corporation
233 South Wacker Drive, Suite 4100
Chicago, IL 60606-6303

Mr. David Porter
E.W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

Re:	Our Insured:	Woolever Brothers
	File Number:	TF209197-2
	Date of Loss:	November 17, 1995
	Claimant:	Estate of Robert Clifford, et al
	GRC Claim Number:	2050290

Dear Gentlemen:

This letter will serve as an update regarding the above.

Suit has been filed against Woolever Brothers Transportation, the driver, Verna Statts, and JHM Enterprises. We have proceeded with a defense of Woolever Brothers while Lincoln General has been providing a defense to Verna Statts and JHM Enterprises. At this time, Lincoln General has not acknowledged primary coverage. It is the assertion of the plaintiff that Statts/JHM were in the business of Woolever Brothers at the time. As indicated earlier, we are disputing this.

Our reserve remains at \$250,000, plus 21 percent expenses. We will update you further as discovery develops.

Very truly yours,

Jerry Parker
Senior Claims Examiner

JP/prm/3371

E. W. BLANCH CO.

Reinsurance Services

3500 West 80th Street, Minneapolis, Minnesota 55431
Telephone: 612/835-3310 • Facsimile: 612/896-4646

August 20, 1996

Mr. Jerry Parker
Claims Examiner
Northland Insurance Company
1295 Building
P. O. Box 64816
St. Paul, MN 55164-0816

-----1st Casualty Excess (\$500mm XS \$500mm)-----
Insured: Woolever Brothers
Claimant: R. & K. Clifford, C. Mulligan
Claim No. TF209197-02
D/A: 11/17/95

Dear Mr. Parker:

Attached is a letter from one of your reinsurers requesting a status report regarding the captioned loss.

We would appreciate your providing us with updated information, including the current reserve.

Your prompt response is appreciated.

Cordially yours,



David A. Porter
Sr. Technical Account Specialist
Midwest Region

DAP:cl
Enclosure
0301C

SENT 08:15:96 AT 14:18 per Reinsurance

708 320 14 page 001

**Kemper Reinsurance Company**

1 Kemper Drive, Long Grove, IL 60049-0015 • 847/320-2600

Facsimile 847/320-2014
Telex 282501**Facsimile Transmission**

Date: August 15, 1996

To: David A. Porter
Company: E.W. Blanch Co.
Location/Office: Minneapolis, MN
Facsimile No: 612-896-4646

From: David L. Mahler
Kemper Reinsurance, Claim Services
Telephone No: (847) 320-3137

TOTAL PAGES, including cover sheet: 1

Reinsured: Northland Insurance Company
Cont. Desc.: 1st Casualty Excess
Insured: Woolever Brothers
DOL: 11-17-95
Your Ref. #: 02R N1403492 1095
KRe Ref. #: 22584-8 95/263770

This file recently crossed my desk on diary and I note we are in need of an update. Please ask the cedc to outline the current status of the ongoing litigation. Has Lincoln General accepted their policy as being primary? The damages on this loss warrant ongoing reporting. Thank you in advance for your assistance.



General Reinsurance Corporation
Suite 2000 North
300 South Riverside Plaza
Chicago, Illinois 60606-6615
312 207-8118 / Facsimile: 312 207-5399

George A. Tomaszewski
Assistant Vice President

December 27, 1995

Jerry Parker
Claims Examiner
Northland Insurance Company
1295 Northland Drive
St. Paul, Minnesota 55120-1139

Re: Insured: Woolever Brothers
Your Claim No.: TF209197-2
Date of Loss: 11/17/95
Claimant: Robert Clifford
GRC Claim No.: 2050290

(Please refer to the GRC claim number when corresponding.)

Dear Jerry:

We acknowledge receipt of your notice dated 12/14/95, which provided first notice to GRC. There appears to be no exposure to GRC at this time and accordingly a closed suspense file will be established.

Should future developments cause you to believe that this matter may not be resolved within your retention or underlying limits, please advise me at once.

Thank you for taking the time to report this matter and for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "George Tomaszewski".

George A. Tomaszewski

GAT:kcm

E. W. Blanch Company
3500 West 80th Street
Minneapolis, MN 55431

To: David Porter

RE: First Report

Date: December 14, 1995

Excess Casualty Reinsurance Claim

REINSURED COMPANY:

Northland Insurance Company
1295 Northland Drive
St. Paul, MN 55120

REINSURANCE CONTRACT:

First Casualty, Excess of Loss

POLICY IDENTIFICATION:

Insured: Woolever Brothers

Policy Number: TF209197

Policy Term: September 1, 1995, to September 1, 1996

Claim Number: TF209197-2

Limits: \$2 Million Combined Single Limit

DATE, TIME AND PLACE OF ACCIDENT:

Accident occurred on November 17, 1995, at 2:00 p.m., near Hometown, Pennsylvania.

DESCRIPTION OF ACCIDENT:

Vehicle driven by lessor rear-ended claimant vehicle #1 pushing it into claimant vehicle #2.

PERSONS INVOLVED AND INJURIES:

Robert Clifford, age 50, driver of claimant vehicle #1. Mr. Clifford was killed in the accident. He is survived by seven children.

Karen Clifford, age 43, passenger in claimant vehicle #1, fatal. Ms. Clifford was married to the driver and is also survived by seven children.

Cheryl Mulligan, driver of claimant vehicle #2. Ms. Mulligan sustained soft tissue injuries.

David Porter
E. W. Blanch Company
December 14, 1995
Page 2

PROPERTY DAMAGE:

Heavy.

INVESTIGATION:

This loss involves a lessor vehicle which had just delivered a load for the insured, and was under dispatch of another company to obtain a load. The lessor has full coverage through Lincoln General Insurance in the amount of \$750,000. Our investigation to date has concentrated on the potential coverage issue. It is our feeling that if the lessor vehicle was not in our business at the time of this accident, we can argue there is no coverage under our policy for this loss.

NEGLIGENCE LAW:

Modified.

JOINT AND SEVERAL LAW:

Not applicable.

CLAIMANTS' ACTIONS:

Claimants have retained counsel.

O/V INSURANCE LIMITS:

Not applicable.

LIABILITY:

Clear.

RESERVES:

Robert Clifford - wrongful death claim	\$123,000
Karen Clifford - wrongful death claim	\$123,000
Cheryl Mulligan - personal injury claim	\$ 3,000
Property damage	<u>\$ 1,000</u>
Total	\$250,000 plus 21 percent expense

David Porter
E. W. Blanch Company
December 14, 1995
Page 3

COMMENTS:

This is our initial report. The handling examiner, Jerry Parker, will report on a six month basis or as developments occur. For your information, I am enclosing copies of our coverage letters to the insured which should clarify the coverage issue for you. If you have any further questions, please contact Mr. Parker.

Very truly yours,

NORTHLAND INSURANCE COMPANY

Larry B. Colburn
Vice President
Commercial Auto

LC/JP/cah/1496
Enclosures

General Reinsurance Corporation
300 S. Riverside Plaza, Suite 2000 N.
Chicago, IL 60606-6615

To: George Tomaszewski

RE: First Report

Date: December 14, 1995

Excess Casualty Reinsurance Claim

REINSURED COMPANY:

Northland Insurance Company
1295 Northland Drive
St. Paul, MN 55120

REINSURANCE CONTRACT:

First Casualty, Excess of Loss

POLICY IDENTIFICATION:

Insured: Woolever Brothers

Policy Number: TF209197

Policy Term: September 1, 1995, to September 1, 1996

Claim Number: TF209197-2

Limits: \$2 Million Combined Single Limit

DATE, TIME AND PLACE OF ACCIDENT:

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Pennsylvania.

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accident. He is survived by seven children.

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married to the driver and is also survived by seven children.

Cheryl Mulligan, driver of claimant vehicle #2. Ms. Mulligan sustained soft tissue
injuries.

George Tomaszewski
General Reinsurance Corporation
December 14, 1995
Page 2

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Heavy.

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NEGLIGENCE LAW:

Modified.

JOINT AND SEVERAL LAW:

Not applicable.

CLAIMANTS' ACTIONS:

Claimants have retained counsel.

O/V INSURANCE LIMITS:

Not applicable.

LIABILITY:

Clear.

RESERVES:

Robert Clifford - wrongful death claim	\$123,000
Karen Clifford - wrongful death claim	\$123,000
Cheryl Mulligan - personal injury claim	\$ 3,000
Property damage	<u>\$ 1,000</u>
Total	\$250,000 plus 21 percent expense

George Tomaszewski
General Reinsurance Corporation
December 14, 1995
Page 3

COMMENTS:

This is our initial report. The handling examiner, Jerry Parker, will report on a six month basis or as developments occur. For your information, I am enclosing copies of our coverage letters to the insured which should clarify the coverage issue for you. If you have any further questions, please contact Mr. Parker.

Very truly yours,

NORTHLAND INSURANCE COMPANY

Larry B. Colburn
Vice President
Commercial Auto

LC/JP/cah/1496
Enclosures

CERTIFICATE OF SERVICE

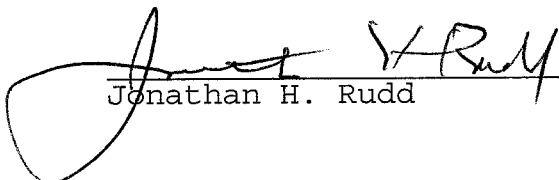
yth I, Jonathan H. Rudd, Esquire, hereby certify that on this
day of June, 2002, a true and correct copy of the foregoing
document was served as follows:

VIA FEDERAL EXPRESS

Ira S. Lipsius, Esquire
Schindel, Farman & Lipsius LLP
225 West 34th Street
New York, NY 10122

VIA FIRST CLASS MAIL

Andrew R. Spiegel, Esquire
3901-A Main Street, 2nd Floor
Philadelphia, PA 19127


Jonathan H. Rudd